

**California Regional Water Quality Control Board  
Santa Ana Region**

**April 4, 2003**

**ITEM: 24**

**Subject:** Administrative Civil Liability Complaint No. R8-2003-0033, Montclair 16215 LLC, Montclair, San Bernardino County

**BACKGROUND**

On March 10, 2003, the Executive Officer issued Administrative Civil Liability Complaint (ACL) No. R8-2003-0033 (copy attached) to Montclair 16215 LLC for alleged violations of the State's General Permit for Storm Water Discharges Associated with Construction Activity (General Permit). In the ACL, the Executive Officer proposed an assessment of \$30,000 for the alleged violations.

**INTRODUCTION**

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to affirm, reject, or modify the proposed administrative civil liability assessment against Montclair 16215 LLC.

ACL No. R8-2003-0033 was issued by the Executive Officer to Montclair 16215 LLC for failure to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and maintain Best Management Practices (BMPs). Inadequate BMP implementation contributed to the discharge of sediments into the storm drain system.

**DISCUSSION**

The General Permit regulates the discharge of storm water from construction sites as required under Section 402(p) of the Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$700), with the State Water Resources Control Board.

Montclair 16215 LLC's 12.3-acre construction site, Apple Gate, located in the City of Montclair, is regulated under the General Permit, WDID No. 8 36S318034.

On December 17, 2002, San Bernardino County Flood Control District (SBCFCD) staff conducted an inspection of the construction site and observed that sediment-laden storm water was being pumped from the site onto West Maitland Street without implementing appropriate best management practices (BMPs) for sediment control. This sediment-laden water entered a storm drain inlet on Central Avenue. SBCFCD staff advised on-site personnel to stop discharging sediment-laden water off-site. SBCFCD staff informed Board staff about the violations at this construction site.

Later on the same day, Board staff inspected the site. Deteriorated and ineffectively placed sandbags were observed at a number of storm drain inlets. Board staff noted that the construction site personnel had resumed pumping the sediment-laden water from the southwest corner of the site. This water flowed south on Vernon Avenue to a catch basin at the northwest corner of Vernon Avenue and Phillips Boulevard. Board staff instructed site personnel to stop discharging polluted storm water to the streets, storm drain systems and to waters of the United States. The site had no erosion control measures in place, the sediment control BMPs were inadequate and were not maintained, and the site had poor housekeeping practices.

On December 18, 2002, SBCFCD staff re-inspected the site. Sediment-laden storm water was again being pumped onto Maitland Avenue without implementing proper BMPs. Once again, SBCFCD staff requested that on-site personnel stop pumping sediment-laden storm water off-site without proper BMPs. Board staff also talked to the site superintendent by phone regarding the conditions at the site and these repeated violations.

On December 19, 2002, Board staff met at the site with Fernando Guijosa, site supervisor, to discuss the violations and review the SWPPP. The SWPPP was not site-specific and training records were not available. A Notice of Violation (NOV) was issued to Montclair 16215 LLC on December 26, 2002. On January 27, 2003, the consultants for Montclair 16215 LLC responded to the NOV.

As discussed above, after repeated requests from Board staff and SBCFCD staff to stop pumping sediment-laden storm water offsite without proper BMPs, Montclair 16215 LLC continued to discharge sediment-laden storm water to the storm drains. On March 10, 2003, the Executive Officer issued the ACL.

Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.

Montclair 16215 LLC is alleged to have violated Provision C.2 of the General Permit. Montclair 16215 LLC violated Provision C.2 by failing to properly develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and by discharging storm water containing pollutants to waters of the United States from its construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations. The maximum potential liability for these violations is \$849,000 (see the attached ACL for details).

Section 13385(e) of the Water Code specifies factors the Board shall consider in establishing the amount of civil liability. These factors are discussed below.

1. Nature, Circumstances, Extent and Gravity of the Violations

Montclair 16215 LLC violated the General Permit by not implementing proper BMPs, by not training its employees and by intentionally discharging sediment-laden storm water to the storm drain system. Even after repeated instructions from SBCFCD and Board staff, Montclair 16215 LLC's employees pumped ponded muddy storm water to the streets without appropriate BMPs.

2. Ability to Pay the Proposed Assessment

Montclair 16215 LLC has not provided any information to indicate that it would have difficulty paying the proposed assessment.

3. Prior History of Violations

Site personnel ignored repeated verbal requests from SBCFCD and Board staff to stop pumping sediment-laden water from the construction site.

4. Degree of Culpability

By submitting the Notice of Intent, the discharger certified that it would comply with the provisions of the General Permit, including the development and implementation of an effective SWPPP and Monitoring Program. Montclair 16215 LLC violated the terms of the General Permit by failing to implement adequate BMPs and by discharging polluted storm water. The discharger did not develop an effective and site-specific SWPPP and ignored repeated warnings from SBCFCD and Board staff.

All dischargers, including Montclair 16215 LLC, are responsible for compliance with the Clean Water Act. Montclair 16215 LLC is fully culpable for violating the terms and conditions of the General Permit, which implement the Clean Water Act. Montclair 16215 LLC had been warned about these violations, failed to correct them, and intentionally continued to violate.

5. Economic Benefit or Savings, if any, Resulting from the Violations

By failing to effectively implement and/or maintain BMPs, Montclair 16215 LLC gained a significant economic advantage over their competitors. Economic savings from these violations include savings from not implementing appropriate BMPs to control or remove sediments from the ponded storm water. These savings have been estimated to be approximately \$12,300 (calculations based on 12.3 acres @ \$1000 per acre).

**STATEWIDE ENFORCEMENT POLICY**

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure the enforcement actions throughout the State are fair, firm and consistent. The above-described administrative civil liability complaint is in accordance with the Statewide Enforcement Policy.

### **RECOMMENDATION**

After consideration of the above factors, staff recommends that the Board affirm the assessment of \$30,000 specified in the Administrative Civil Liability Complaint issued by the Executive Officer on March 10, 2003.

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Complaint No. R8-2003-0033</b>
	)	<b>for</b>
<b>Montclair 16215 LLC</b>	)	<b>Administrative Civil Liability</b>
<b>10370 Trademark Street</b>	)	
<b>Rancho Cucamonga, CA 91370</b>	)	
	)	
<b><u>Attn: John Fong</u></b>	)	

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Montclair 16215 LLC is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint will be scheduled for the Board's regular meeting on April 4, 2003, at the Cucamonga County Water District, 10440 Ashford Street, Rancho Cucamonga. Montclair 16215 LLC or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting and the staff report for this item will be mailed to you not less than 10 days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. Montclair 16215 LLC is alleged to have violated Special Provision C.2 of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ (General Permit). Montclair 16215 LLC failed to develop and implement an effective Storm Water Pollution Prevention Plan (SWPPP) and discharged storm water containing pollutants to waters of the United States from the construction site. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
5. According to the Notice of Intent filed on May 9, 2002, Montclair 16215 LLC is the owner of the construction site located at the intersection of Vernon Avenue and Mission Boulevard in Montclair. Runoff from the site (Applegate) is regulated under the State's General Permit, WDID No. 8 36S318034.
6. This complaint is based on the following facts:
  - a) On December 17, 2002, San Bernardino County Flood Control District (SBCFCD) staff conducted an inspection of the construction site and observed

that sediment-laden storm water was being pumped from the site onto West Maitland Street without implementing appropriate best management practices (BMPs) for sediment control. This sediment-laden water entered a storm drain inlet on Central Avenue. SBCFCD staff advised on-site personnel to stop discharging sediment-laden water off-site. SBCFCD staff informed Board staff about violations at this construction site.

- b) Later on the same day, Board staff inspected the site. Deteriorated and ineffectively placed sandbags were observed at a number of storm drain inlets. Board staff noted that the construction site personnel had resumed pumping of sediment-laden water from the southwest corner of the site. This water flowed south on Vernon Avenue to a catch basin at the northwest corner of Vernon Avenue and Phillips Boulevard. Board staff instructed site personnel to stop discharging polluted storm water to the streets, storm drain systems and to waters of the United States. The site had no erosion control measures in place, the sediment control BMPs were inadequate and were not maintained, and the site had poor housekeeping practices.
- c) On December 18, 2002, SBCFCD staff re-inspected the site. Sediment-laden storm water was again being pumped onto Maitland Avenue without implementing proper BMPs. Once again, SBCFCD staff requested on-site personnel to stop pumping sediment-laden water off-site without proper BMPs. Board staff also talked to the site superintendent by phone regarding the conditions at the site.
- d) On December 19, 2002, Board staff met at the site with Fernando Guijosa, site supervisor, to discuss the violations and review the SWPPP. The SWPPP was not site specific and training records were not available. A Notice of Violation (NOV) was issued to Montclair 16215 LLC on December 26, 2002. On January 27, 2003, the consultants for Montclair 16215 LLC responded to the NOV.

7. Montclair 16215 LLC is alleged to have violated Special Provision C.2 of the General Permit.

A) The General Permit Special Provision C.2 provides:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT<sup>1</sup> performance standard."

Montclair 16215 LLC violated this provision by not developing and implementing an effective SWPPP and by discharging sediment-laden storm water from the construction site.

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<sup>1</sup> BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology

8. Montclair 16215 LLC violated the General Permit by discharging storm water containing pollutants to waters of the United States from the construction site and by failing to develop and implement an effective SWPPP. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.
9. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs. Additional liability, not to exceed \$10 per gallon, may be imposed for each gallon discharged in excess of 1,000 gallons.
10. The sediment-laden storm water pumped offsite and discharged to the storm drain system from the site was estimated to be 30,000 gallons (based on 20,000 GPH pump capacity for the pump that was used at the site; estimated using 30 minutes each for the three separate incidents). The storm water runoff by gravity flow from the remainder of the site was estimated to be approximately 53,900 gallons (based on area, runoff coefficient and storm intensity).
11. Pursuant to Water Code Section 13385(c), the total maximum assessment for which Montclair 16215 LLC is civilly liable is \$849,000 (\$20,000 @ \$10,000 for each day of violation; and an additional \$829,000 based on the estimated discharge of 83,900 - 1,000 = 82,900 gallons @ \$10 per gallon).
12. Montclair 16215 LLC discharged approximately 83,900 gallons of sediment-laden water over two days. Montclair 16215 LLC saved approximately \$1,200 by not implementing adequate BMPs at the site (12.3 acres @ \$1,000/acre for 10% of the project site). Board staff costs for investigating this incident were approximately \$2,800 (40 hours at \$70/hour). These factors were considered in assessing the penalty proposed in Paragraph 15, below.
13. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

Factor	Comment
<b>A. Nature, Circumstances, Extent and Gravity of Violation</b>	<p>A site-specific SWPPP was not developed and implemented. Due to the site's lack of adequate best management practices (BMPs) implementation and maintenance, sediment-laden storm water discharge occurred and entered the storm drain system. Photos taken and samples collected at the site indicate muddy water discharges. Site personnel ignored repeated directives to stop pumping muddy water from the site to the streets and the storm drains. The storm drain discharges into San Antonio Channel, which flows into the Santa Ana River at Prado Dam.</p> <p>Montclair 16215 LLC failed to provide adequate training to its staff, contractors and subcontractors to control pollutants in storm water runoff from the site.</p>
<b>B. Culpability</b>	<p>The discharger violated the terms of the General Permit by failing to implement adequate BMPs and by discharging polluted storm water. The discharger did not develop an effective and site-specific SWPPP and ignored repeated warnings from SBCFCD and Board staff.</p>
<b>C. Economic Benefit or Savings</b>	<p>Montclair 16215 LLC saved approximately \$1,200 by not implementing adequate BMPs at the site during construction.</p>
<b>D. Prior History of Violations</b>	<p>Site personnel ignored repeated requests from SBCFCD and Board staff to stop pumping sediment-laden water from the construction site.</p>
<b>E. Staff Costs</b>	<p>Regional Board staff spent approximately 15 hours investigating this incident (@\$70.00 per hour, the total cost for staff time is \$1050).</p>
<b>F. Ability to pay</b>	<p>The discharger has not provided any information to indicate that it is unable to pay the proposed amount.</p>

14. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on Montclair 16215 LLC in the amount of \$30,000 for the violations cited above.


#### WAIVER OF HEARING

Montclair 16215 LLC may waive its right to a hearing. If you choose to do so, please sign the attached waiver and return it, together with a check or money order for \$30,000 and the bottom portion of the invoice to the State Water Resources Control Board in the enclosed preprinted envelope.



If you have any questions, please contact Ms. Milasol C. Gaslan at (909) 782-4419 or Mr. Michael Adackapara at (909) 782-3238, or contact the Regional Board's staff counsel, Jorge Leon, at (916) 341-5180.

3/10/03  
Date

  
Gerard J. Thibeault  
Executive Officer

In the matter of:	)	Complaint No. R8-2003-0033
	)	for
Montclair 16215 LLC	)	Administrative Civil Liability
10370 Trademark Street	)	
Rancho Cucamonga, CA 91370	)	
Attn: John Fong _____)	)	

# WAIVER OF HEARING

I agree to waive the right of Montclair 16215 LLC to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2002-0072. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of \$30,000. I understand that I am giving up the right of Montclair 16215 LLC to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

\_\_\_\_\_  
Date

\_\_\_\_\_  
for Montclair 16215 LLC



# State Water Resources Control Board



**Winston H. Hickox**  
Secretary for  
Environmental  
Protection

*The energy challenge facing California is real.  
Every Californian needs to take immediate action to reduce energy consumption.  
For a list of simple ways you can reduce demand and cut your energy costs, see our website at <http://www.swrcb.ca.gov>*

**Gray Davis**  
Governor

**To:**  
MONTCLAIR 16215 LLC  
13070 TRADEMARK ST.  
RANCHO CUCAMONGA, CA 91730  
ATTN: John Fong

**Invoice No:** 33031  
**Invoice Date:** 03/10/2003  
**Enforcement Action ID:** 68677  
**Enforcement Order No:** R8-2003-0033

## INVOICE

Description	Amount	Due Date
41633 LIABILITY AMOUNT	\$30,000.00	04/09/2003
TOTAL AMOUNT DUE		\$30,000.00

### California Environmental Protection Agency



Retain above portion for your records



Please return bottom portion with your payment

MONTCLAIR 16215 LLC  
13070 TRADEMARK ST.  
RANCHO CUCAMONGA, CA 91730  
ATTN: John Fong

Description	Amount	Due Date
41633 LIABDUE	\$30,000.00	04/09/2003
TOTAL AMOUNT DUE		\$30,000.00

Make your check payable to:

**State Water Resources Control Board**

Mail payment to:

**SWRCB ACCOUNTING**  
**ATTN: ENFORCEMENT**  
**P. O. Box 100**  
**SACRAMENTO, CA 95812-0100**

**Amount Enclosed: \$** \_\_\_\_\_

PLEASE PRINT THE FOLLOWING INVOICE NUMBER ON YOUR CHECK: 33031

**Invoice Date:** 03/10/2003  
**Enforcement Action ID:** 68677  
**Enforcement Order No.:** R8-2003-0033